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New York

President:	Mr. Kafando/Mr. Tiendrébéogo	(Burkina Faso)
Members:	Austria	Mr. Mayr-Harting
	China	Mr. Liu Zhenmin
	Costa Rica	Mr. Urbina
	Croatia	Mr. Vilović
	France	Mr. Araud
	Japan	Mr. Takasu
	Libyan Arab Jamahiriya	Mr. Dabbashi
	Mexico	Mr. Heller
	Russian Federation	Mr. Churkin
	Turkey	Mr. Apakan
	Uganda	Mr. Rugunda
	United Kingdom of Great Britain and Northern Ireland	Sir Mark Lyall Grant
	United States of America	Ms. DiCarlo
	Viet Nam	Mr. Le Luong Minh

Agenda

Reports of the Secretary-General on the Sudan

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The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court. I now give him the floor.

Mr. Moreno-Ocampo: Mr. President, I thank you for this opportunity to brief the Council on the judicial activities of the Office of the Prosecutor of the International Criminal Court (ICC) on Darfur.

Since my last briefing in June 2009 (see S/PV.6135), there have been positive developments. First, judicial proceedings in relation to the Darfur situation are progressing; secondly, cooperation with the African Union, the League of Arab States and other international bodies has been fruitful; and, thirdly, States and international organizations have maintained consistent support for the execution of the Court's arrests warrants. I shall begin by referring to these three aspects.

First, I shall address the International Criminal Court's judicial proceedings. On 19 November, rebel leader Bahr Abu Garda, President of the United Resistance Front, was the first person to appear in Court in relation to Darfur crimes. My Office alleges that he is responsible for killing and injuring peacekeepers from Botswana, Senegal, Mali, Nigeria and the Gambia during the attack against the Haskanita bases. Abu Garda appeared voluntarily before the Court and presented his defence, arguing that he was not part of the attack. However, we presented 552 incriminatory items of evidence and called three witnesses to testify during the confirmation of charges. Two of them were peacekeepers from Nigeria and the Gambia who survived the attacks, and the other was a senior Kenyan military expert.

For my Office, attacking peacekeepers is a serious crime. It affects millions of civilians in need of aid and security. Both this Council and the African Union have emphasized the seriousness of the Haskanita attack and the need to bring the perpetrators to justice. We are grateful to a number of States — including Senegal, Mali, Botswana, Nigeria, the Gambia, Chad and the Netherlands — that contributed to the investigation and surrender of the rebel leader.

On 20 November in The Hague, the representative of Nigeria, which is an incoming member of this Council, stated:

> "The Court's function of ensuring accountability for grave crimes is vital for the maintenance of lasting international peace ... Cooperation is critical in enhancing the effectiveness of the ICC ... Nigeria is presently assisting the Court in the prosecution of those involved in [...] the Haskanita killings of peacekeepers in Darfur."

We are grateful for that support.

The decision of the judges on the confirmation of charges is expected within two months. In this and the other cases, my Office is continuously taking measures to protect our witnesses. As the Council is aware, individuals falsely suspected of providing evidence to the International Criminal Court have been arrested and tortured in Khartoum. There have been public threats from the Sudanese authorities against anybody who cooperates with the Court's investigation of the crimes in Darfur. We are pleased, however, that no witness has been harmed.

There have also been positive developments in our cooperation with institutions that can complement the intervention of the International Criminal Court and promote additional proceedings for other perpetrators as well as truth and reconciliation mechanisms. This is the comprehensive approach defined by the Council in resolution 1593 (2005), which encourages the Court to support international cooperation with domestic efforts to promote the rule of law, protect human rights and

combat impunity in Darfur, and which emphasizes the need to promote healing and reconciliation in order to complement judicial processes. This is the approach adopted by the Security Council and which the prosecution is following.

The League of Arab States, which reported on the commission of massive crimes in Darfur as early as 2004, is active in efforts to promote justice in Darfur. At the initiative of Secretary-General Amr Moussa, international crimes have been included in the Sudanese penal code.

President Mbeki, as head of the African Union High-level Panel, contacted me upon taking office and requested information on our activities and on crimes committed in Darfur. My Office submitted written observations to the Mbeki panel. We noted that the Government of the Sudan had created multiple judicial instruments and courts, but never allowed these courts to fulfil their mandates. The Mbeki panel shared this analysis in its own report (S/2009/599, annex I), stating that:

> "As a result of the failings of the State in dealing with the grave situation in Darfur, faith in the criminal justice system has been severely eroded. To restore confidence and prevent impunity, a root and branch change will be required."

On 7 July, I was received by the full panel at African Union headquarters in Addis Ababa. We held a half-day dialogue. It was then clarified that the cases against President Al-Bashir, Ahmed Haroun and Ali Kushayb, as well as Abu Garda and two other rebel commanders, will be decided by the judges of the International Criminal Court. Additionally, we had exchanges on the complementary role that other courts can play to investigate other perpetrators.

The Panel's report respects the independent judicial work of the International Criminal Court and recognizes the need to do more, not less, justice efforts for Darfur and to try more, not less, cases. As the Panel rightly notes:

> "The emphasis on the International Criminal Court should not distract from the reality that, even at full capacity, the Court can only deal with a handful of individuals, thus leaving the burden of justice to the national system."

The Panel thus adopted a comprehensive solution, combining the current International Criminal Court cases with the possibility of having other courts try other perpetrators, if and when the conditions for such courts to operate effectively are created.

This last point is key and I wish to highlight it. As the Panel notes:

> "To date ... the perpetrators of the serious crimes in Darfur have overwhelmingly remained unpunished and the need for healing and reconciliation has remained largely unmet. This situation must be rectified urgently."

The Panel proceeds to list a series of prerequisites to be met before this situation can be rectified, stressing that no genuine proceedings can take place before the Sudan, first, removes official immunities; secondly, adopts special measures for dealing with rape and sexual crimes; and thirdly, ensures the protection of witnesses. Thus, it is not just a matter of setting up new courts. It is a matter of creating a framework allowing these courts to operate effectively and independently.

As Council members know, on 29 October a high-level meeting in Abuja of the African Union Peace and Security Council endorsed the report and recommendations. It established an implementation panel comprising former Presidents Thabo Mbeki, Pierre Buyoya and Abdulsalami Abubakar. The Office of the Prosecutor is ready to assist the new panel in its endeavours.

In past meetings, Council members have also stressed the need to pursue an integrated approach in Darfur integrating justice, security, political negotiations and humanitarian aid. I am glad to report to this Council that all the actors working on those different aspects are respecting the judicial independence of the Court — in particular, as I mentioned, the Mbeki panel but also the Prime Minister of Qatar as chair of the Arab-African ministerial committee, Joint African Union-United Nations Chief Mediator for Darfur Djibrill Bassolé, and the Arab League Secretary-General. It is remarkable, because they demonstrate that engagement with the Government of the Sudan in political negotiations is possible while recognizing President Al-Bashir's individual criminal responsibility for the crimes committed and respecting the Court's decisions. Engagement while respecting legal limits is the solution that they are pushing.

There are also positive developments to report regarding the cooperation of States, including in the

execution of arrest warrants. The International Criminal Court (ICC) is receiving decisive public support. Efforts to get the arrests executed are going forward. The warrants for arrest have been transmitted to Sudan. In its resolution 1593 (2005) and its presidential statement of 16 June 2008 (S/PRST/2008/21), the Security Council insisted on the duty of the Sudan to cooperate fully with the Court. Ending crimes and arresting individuals on Sudanese territory is a primary responsibility of the Sudanese Government. It has both the legal duty and the ability to do so. All efforts during this month have converged to encourage the Sudan to respect its responsibilities as a United Nations Member State, to put an end to crimes and to arrest the persons sought by the Court.

During the General Assembly debate in October, 56 States emphasized the importance of cooperation with the Court, including in relation to the arrests. On 29 October, Kenya, on behalf of the African States parties, reaffirmed their commitment to their legal obligations with no reservations. African States parties to the Rome Statute have affirmed both their position as African Union members that the Security Council should consider deferring the Darfur investigation and, at the same time, their legal duty under the Statute to execute arrest warrants should indictees be present on their territory.

Over the past six months, Deputy Prosecutor Fatou Bensouda and I met with many African Presidents, including President Zuma of South Africa, President Museveni of Uganda, President Jammeh of the Gambia, President Kibaki of Kenya and President Deby Itno of Chad. All of them expressed their commitment to justice and to ending impunity. I would also like to note that, during the General Assembly debate in October, Mexico referred to the refusal of the Sudan to cooperate with the Court as "clear non-compliance with a legally binding obligation"; Peru and Bolivia indicated that, upon receipt of the warrant, they had activated national procedures to ensure the arrest of President Al-Bashir, should he set foot in their countries. On 15 September, the European Union's External Relations Council adopted conclusions calling upon the Sudan to cooperate fully with the Court in accordance with its obligations under international law.

As a consequence, President Al-Bashir, at risk of being arrested, has not travelled to the territory of States parties for high-level events that he had planned to attend in South Africa, Uganda, Nigeria and Venezuela. He cannot attend the Climate Conference in Copenhagen. He has not attended the United Nations General Assembly, nor a recent meeting of the Organization of the Islamic Conference's Committee for Economic and Commercial Cooperation. This is the way to ensure the arrest of President Al-Bashir. This process of marginalization of indicted criminals, if maintained steadfastly, is a way to ensure the ultimate implementation of the arrest warrants issued by the Court. Respect for the Court's decision to issue a warrant for President Al-Bashir's arrest sends a clear message: President Al-Bashir will face justice. Any leader committing this type of crime will face justice. Power does not provide immunity. There was no immunity for President Milošević; there was no immunity for Prime Minister Kambanda; there was no immunity for President Taylor. There will be no immunity for President Al-Bashir.

There are also negative developments in two areas: the lack of cooperation of the Sudan, and the continuation of crimes. Sudan has refused to cooperate with the Court. In resolution 1593 (2005), the Council decided that the "Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor" (*para. 2*).

As I said, the warrants were transmitted to the Sudanese Government. However, President Al-Bashir has refused to appear in court. He has refused to appoint a lawyer to represent his position. He has refused to arrest Ali Kushayb and Ahmad Harun. Ahmad Harun is now the Governor of South Kordofan. This all represents non-compliance with the Security Council's decisions. Instead, over the past six months, President Al-Bashir has continued to use the Sudanese State apparatus to conduct a diplomatic, political and communications campaign against the Court; he has endeavoured to shift the attention of the international community to other pressing issues, such as the conflict with the South. President Al-Bashir is willing to exacerbate such conflict, if it can divert your attention from the crimes committed in Darfur and his responsibility for them.

As the Prosecutor, I will deal with any judicial challenge brought by President Al-Bashir and other suspects in court. But I will need the full support of the Council to ensure that the focus remains on the need to arrest President Al-Bashir and the other individuals

sought by the Court, and on the need to end the crimes in Darfur. The crimes are continuing. During the past six months there have been indiscriminate bombings of civilians resulting in casualties and forced displacement; ongoing tactics aimed at exterminating displaced persons in the camps, including hindering humanitarian aid and expelling assistance providers with the obvious consequence of reducing access in camps to food, water and other services; ongoing rapes and sexual violence resulting in mental and bodily harm; and continuing use of child soldiers, though by various parties. As recently as last week, on 25 November, there were reports of Janjaweed militia attacks against Al-Harra and Jabel Issa, two villages in North Darfur, in which civilians were captured, villagers beaten and property looted.

I would like to inform the Council that, with a view to increasing predictability, my Office is reviewing information in four main areas. The first is acts affecting displaced persons, committed in particular by the Humanitarian Aid Commission (HAC). On 10 November 2009, HAC Commissioner Hassabo announced that the Sudanese Government would close the camps for displaced persons by early next year, without guarantees of access to food and water, and without guarantees of security. Sheikhs in camps who oppose returns to unsafe areas are targeted. They are imprisoned and tortured. Let me clarify that any forced return of displaced persons in these conditions can constitute a new crime within our jurisdiction.

The second area is acts against civilians in the camps, including rape, by the forces of President Al-Bashir.

Thirdly, we are monitoring the use of child soldiers. The recent report by Ms. Coomaraswamy indicates that both the Sudanese Armed Forces and the rebel groups recruit children. That is a crime under our jurisdiction.

Fourthly, as our investigation into the case of President Al-Bashir demonstrated that he used the State apparatus not only to commit massive crimes but also to conceal them, and thus to facilitate their continuation, my Office is considering the criminal responsibility of Sudanese officials who actively deny and conceal crimes. They do not benefit from any immunity under the Rome Statute. Since Nuremberg, due obedience is no longer a legal excuse for the commission of crimes.

A few months ago, on 4 March 2009, the judges of the International Criminal Court ruled that the policy adopted by President Al-Bashir against 2.5 million Sudanese citizens in the camps constituted extermination, as a crime against humanity. The Appeals Chamber is considering whether the charge of genocide should be added.

President Al-Bashir, instead of stopping the crimes, is stopping information about the crimes. The decision to expel humanitarian workers and silence others by threats of expulsion, or the attempts at restricting the freedom of movement of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) are part of this policy to reduce the monitoring capacity of the international community.

In his 16 November report (S/2009/592), the Secretary-General accused the Government of the Sudan of breaching UNAMID's Status of Forces Agreement by placing impediments on the movement of peacekeepers. UNAMID, which is the last international presence able to keep a protective eye on camps and rural areas and to report on rapes and sexual violence, is now blocked.

As I have mentioned, my mandate as Prosecutor is to investigate and prosecute those responsible for such crimes, in order to contribute to the prevention of future crimes. I am ready to answer any challenge — about the evidence or about legal aspects — in court, but I will need the full support of the Council to contribute to ending the current crimes against victims in Darfur.

The President (*spoke in French*): I thank Mr. Moreno-Ocampo for his briefing.

I shall now give the floor to members of the Council wishing to make statements.

Sir Mark Lyall Grant (United Kingdom): I should like to welcome the Prosecutor of the International Criminal Court (ICC) back to the Security Council and to thank him for his report and his comprehensive briefing on his investigation into the situation in Darfur. I should also like to take this opportunity to thank the Prosecutor and his team for their efforts to bring justice to the victims of the serious crimes that have been committed in Darfur.

My Government is encouraged by progress over the past six months, which the Prosecutor has reported, in relation to one of the cases which he has opened in

respect of Darfur. We welcome the voluntary appearance at the ICC of Bahr Idriss Abu Garda to answer charges of war crimes in relation to the June 2008 attack on African Union and United Nations peacekeepers at Haskanita. It is encouraging that some parties to the conflict in Darfur are now showing willingness to cooperate with the ICC, and we call on all the others to do likewise.

My Government remains deeply concerned, however, by the continued lack of cooperation with the ICC by the Government of Sudan. Once again, the Prosecutor appears before us to report no movement on this issue, in particular over the outstanding arrest warrants. There are no relevant proceedings under way in Sudan in relation to the indictees. Nor has the Government of Sudan given any indication of an intention to investigate or prosecute these cases. I should like to underline that, as the Prosecutor stated, Sudan is under a legal obligation to cooperate with the ICC by virtue of resolution 1593 (2005), and we reiterate once again our call on Sudan and all other parties to the conflict to provide full cooperation to the Court.

My Government is also very concerned to hear the Prosecutor's analysis that very serious crimes continue to be committed in Darfur, in particular attacks on civilians, including humanitarian workers, sexual violence, forced returns and the use of child soldiers.

The United Kingdom welcomes the steps the Prosecutor is taking to monitor these unacceptable attacks on the civil population of Darfur. We also welcome the Prosecutor's continued contacts with other relevant international and regional actors, in particular his engagement with the African Union High-level Panel on Darfur and its preparation and implementation of the recommendations in the Mbeki report (S/2009/599, annex I) on combating impunity and promoting peace and reconciliation in Darfur. We consider the Mbeki Panel report, which we shall be discussing later this month, to be thorough, detailed and balanced, with much that offers scope for progress on peace, justice and reconciliation.

In conclusion, I would like to underline that the United Kingdom remains a strong supporter of the International Criminal Court and of its work to combat impunity in Darfur. We commend Prosecutor Moreno-Ocampo's continuing efforts to achieve this.

Ms. DiCarlo (United States of America): I too would like to welcome Prosecutor Moreno-Ocampo back to the Security Council today and to thank him for his briefing. We are very pleased to hear about the progress that is being made — that is, that one case is proceeding and that some States and organizations are providing excellent cooperation.

But the Prosecutor's briefing and report make clear that the Government of Sudan has not fulfilled its obligation to cooperate with the International Criminal Court (ICC) under resolution 1593 (2005), a binding Chapter VII resolution whose importance was reiterated by the Council in our 16 June 2008 presidential statement (S/PRST/2008/21).

The United Sates believes that those responsible for the atrocities in Darfur must be held accountable. Actions in Darfur affect the stability of Sudan as a whole. Despite the creation of a special court for Darfur and numerous committees established in 2005 to pursue justice for Darfuri victims, the ICC arrest warrants are still outstanding.

We continue to call on the Government of Sudan to cooperate fully with the ICC, as required by resolution 1593 (2005). Continued violence in Darfur is undermining an already fragile humanitarian situation. During the past six months, the conflict continued to claim the lives of more civilians. The United Nations Panel of Experts on the Sudan confirmed that the Government of Sudan violated the ban on military flights over Darfur.

Both the Prosecutor's report and the Secretary-General's report (S/2009/592), describe Sudanese armed forces and militia ground offences supported by air bombardments in the Jebel Marra region and in North Darfur. Those reports note that the Government operations around Korma, Ain Siro and Melitt all resulted in civilian casualties, the displacement of more civilians and the destruction of public infrastructure. The Government's recent actions are the very type of actions that led the Council to refer the conflict in Darfur to the ICC in the first place.

On top of this continuing violence, the Government of Sudan has contributed to the deterioration of the humanitarian situation in Darfur. We were able to temporarily narrow serious gaps in life-saving sectors when the Government of Sudan expelled humanitarian non-governmental organizations (NGOs) on 5 March.

But those efforts cannot necessarily be sustained over the long term. The African Union-United Nations Hybrid Operation in Darfur (UNAMID) reports that the international NGO presence in Darfur has been cut in half. That has dramatically reduced those groups' ability to provide assistance to those in need. The Council must be vigilant in holding the Government of Sudan responsible for fully meeting the humanitarian needs of its population.

Those responsible for these atrocities must be held accountable. We urge all States, including those not party to the Rome Statute, to refrain from providing political or financial support to Sudanese suspects indicted by the ICC.

Although the United States is not party to the Rome Statute, it was pleased to participate last week for the first time as an observer in the Assembly of States Parties to the Rome Statute. That decision reflected the United States commitment to engage with the international community on issues that affect our foreign policy interests. Ending impunity for crimes against humanity, including crimes on the staggering scale of those committed in Darfur, ranks high among our commitments. The United States will therefore continue to be supportive of the ICC's prosecution of these cases to the extent consistent with United States domestic law.

Let me say a word on the African Union High-level Panel on Darfur, chaired by former South African President Thabo Mbeki. On 29 October, the Panel made several recommendations to combat impunity and advance the cause of accountability, peace, healing and reconciliation. We welcome efforts to strengthen Sudan's national legal system to let it deal appropriately with those who committed atrocities in Darfur. But efforts to strengthen Sudan's legal system will not succeed unless they are backed by the political will to bring perpetuators to justice. The recommendations of the Mbeki report (S/2009/599, annex I) about a hybrid tribunal are worth further study, but we believe that the ICC's prosecution of the key architects of the conflict in Darfur remains critical.

In conclusion, let me reiterate my Government's unequivocal support for the pursuit of justice and accountability for those who have committed atrocities in Darfur. We once again call upon the Government of Sudan to fully implement resolution 1593 (2005).

Mr. Heller (Mexico) (*spoke in Spanish*): Mexico thanks the Prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, for presenting the tenth report of the ICC to the Security Council on the situation in Darfur, pursuant to Security Council resolution 1593 (2005).

Almost five years have passed since that resolution was adopted, and the situation in Darfur continues to be grave, because of the enormous challenges that continue to be posed by violations of human rights and international humanitarian law. And, with every passing day, impunity for those violations continues to prevail.

The conflict in Darfur constantly reveals murder, violations, forced displacement and child recruitment for participation in the hostilities, among other crimes that result from attacks against civilian populations. Those populations not only face a climate of violence but also suffer from restrictions on access to humanitarian relief and are under constant threat.

Among the three cases that the Prosecutor's Office has filed relating to the situation in Darfur, the only positive element that we can take from the tenth report is the voluntary appearance before the Court in May and October 2009 of the rebel leader Bahr Idriss Abu Garda, suspected of war crimes in the attack against the African Union base in Haskanita.

As for the other two cases, once again, we see that cooperation by the Government of the Sudan with the International Criminal Court is non-existent, especially on the execution of outstanding arrest warrants. Nor have national procedures been established in the Sudan to investigate and try the perpetrators of crimes documented by the Prosecutor's Office.

The Government of the Sudan is obliged to investigate and prosecute the perpetrators of international crimes committed within its jurisdiction. That is a basic principle of international criminal law and a premise of the system created by the Rome Statute. Events since the adoption of resolution 1593 (2005) show that, faced with the Government's inaction, the International Criminal Court should exercise its jurisdiction; all the other parties to the Darfur conflict should cooperate with it. Therefore, we need to recall that the total lack of cooperation of the Government of Sudan is a challenge not only to the

work of the Court, but also to the authority of the Security Council.

The Prosecutor's report provides us with a wide-ranging perspective on the nature of the conflict, the pattern of violations of human rights and international humanitarian law and the role being played by relevant international actors. Here, we acknowledge that one very important aspect is the interaction between the Prosecutor's Office and the independent African Union High-level Panel on Darfur. Several times in the Council, Mexico has stressed the importance of the role of regional actors in seeking a comprehensive solution to the situation in Darfur and has pointed out that Africa should be the main architect of a solution to the crisis.

The African Union Panel has identified deep-rooted challenges to justice such as the lack of trust in local institutions and the impunity that obviously prevails in this part of the Sudan because of weak institutional structures incapable of delivering justice, assigning responsibility or guaranteeing basic rights and providing redress to victims. We call for the Panel's course of action to be pursued and that the aims of promoting peace and reconciliation and combating impunity in Sudan be achieved. The Panel's recommendations, especially those related to justice and impunity, have been well received by the international community, in particular by the Peace and Security Council of the African Union and the ICC Prosecutor's Office. We hope for the same when, in a few days, the Security Council considers the report (S/2009/599, annex I). Even within the Sudan, they have been well received by some sectors that see them as a useful vehicle for combating impunity. We hope that the Government of the Sudan will use these reactions to build agreements favourable to achieving the aforementioned objectives.

In this context full and comprehensive compliance with the recommendations is critical in the short and medium term. In such a multifaceted conflict as that in Darfur, there is a risk that by only encouraging one of objectives we achieve neither peace nor justice. For that reason, we would like to stress the importance of dialogue and cooperation between the African Union's Panel of Experts and the Office of the Prosecutor of the International Criminal Court. We hope that through joint work the recommendations will be implemented and produce results very shortly. It is therefore fundamental that the Government of the Sudan genuinely cooperate with the international community and satisfactorily comply with its international obligations.

The international community and the Security Council cannot remain passive in the face of situations such as that in Darfur, which to date has led to 300,000 deaths and at least 2.5 million displaced people. Mexico therefore reiterates its call to the Security Council to demand that the Government of the Sudan fully comply with resolution 1593 (2005), that it cooperate without delay with the International Criminal Court, that it undertake concrete actions to put an end to the escalation of violence and impunity in Darfur, and that it adopt the necessary decisions to guarantee the full protection of the civilian population.

Mr. Araud (France) (*spoke in French*): I thank Mr. Moreno-Ocampo for his biannual report in implementation of resolution 1593 (2005). Like previous reports, this report confirms the lack of cooperation on the part of the Government of the Sudan with the International Criminal Court (ICC): arrest warrants have not been executed, the Court's jurisdiction is not acknowledged, the authority of the Security Council and its resolution 1593 (2005) are being questioned, and no national judicial procedure has been undertaken.

In 2005, when we adopted resolution 1593 (2005), despite differences among us regarding the Court, the Council showed its will to not tolerate that the terrible crimes committed in Darfur go unpunished. The resolution was triggered by the recommendations of the Commission of Inquiry, which we had requested to investigate the situation in Darfur and which had confirmed the commission of mass violations of human rights and international humanitarian law and the existence of crimes against humanity and war crimes.

France supported the adoption of the resolution, because it considered that transferring the case to the ICC was the best way to ensure that the perpetrators of the crimes would be judged impartially and in an efficient manner, and to send a strong message, beyond Darfur even, about the Security Council's determination to combat impunity for the most serious crimes against the human conscience.

In the days prior to the adoption of resolution 1593 (2005), the Security Council had successively adopted resolution 1590 (2005) in order to help the African Union with its surveillance and protection mechanism and resolution 1591 (2005) in order to bring the conflict to an end. Resolution 1593 (2005)

was aimed at ending impunity and was therefore part of a wider-ranging and coherent policy aimed at re-establishing peace and security in Darfur. The action of the Court and the Security Council have been complementary, therefore, although independent. France is convinced that there is no contradiction between justice and peace, and that combating impunity is one of the conditions of lasting peace.

It is true that political timing and judicial timing do not always coincide. The needs presented by a peace process can at times differ from the requirements of judicial process. That explains the presence in the Rome Statute of a mechanism that allows the Security Council to suspend investigations or proceedings undertaken by the ICC for a year. This mechanism, whose effects are temporary by definition, can only be used when the interests of peace and security absolutely requires such use. Its purpose can never be to permit impunity for crimes before the Court. It is clear that requirements for invoking this mechanism have not been met in the case of Darfur.

Whatever the case, it is not up to the Security Council to intervene in the independent judicial decision-making by the ICC and its Prosecutor. However, it should demand that everyone respect a resolution adopted under Chapter VII of the Charter that imposes on the Government of the Sudan and all other parties to the Darfur conflict full cooperation with the ICC and its Prosecutor and to provide all necessary assistance, and which firmly demands that all States and regional and international organizations concerned cooperate fully.

I note the positive indications provided by Prosecutor Moreno-Ocampo on cooperation with the Arab League, the African Union and the Government of Qatar. I also note the recognition that he has expressed here for the assistance provided by some countries in the investigation on the attack against Haskanita, which led to a first hearing in October.

I would like to reiterate that France believes firmly both in the authority of the Security Council, as the main United Nations body for maintaining peace and security, and in that of the International Criminal Court, as the judicial body responsible for punishing the most serious crimes in violation of international humanitarian law and human rights, to which the Council has entrusted the mission of prosecuting the atrocities committed in Darfur.

Everything should be done to bring about an urgent settlement to the conflict in Darfur and facilitate mediation efforts. Fighting impunity is a prerequisite that will contribute to restoring lasting peace and stability in the region.

Mr. Churkin (Russian Federation) (*spoke in Russian*): First of all, let me express our appreciation to the Prosecutor of the International Criminal Court (ICC), Mr. Moreno-Ocampo, for his tenth report on measures taken to investigate the situation in Darfur under Security Council resolution 1593 (2005) and for today's briefing. We note that, judging by the report, the Office of the Prosecutor in its work on Darfur is paying more and more attention to factors related to achieving a comprehensive peace in Darfur and in the Sudan overall, and also to national and regional efforts to combat impunity. In spite of a few differences in the assessments in today's briefing, we believe that this trend will continue to strengthen.

We welcome the report of the African Union (AU) High Level Panel on Darfur, chaired by former South African President Mbeki, containing a number of interesting ideas on the use of national mechanisms to bring about accountability. We look forward to a continuation of contacts between the Prosecutor of the ICC and the High Level Panel for the purposes of achieving peace, justice and reconciliation in Darfur, as well as for dealing with the challenges of criminal justice.

We take note of the Prosecutor's assessment of the state of cooperation between Khartoum and the ICC. However, we would call on him to carefully weigh his steps in his work on Darfur and to calibrate them with the challenges of achieving peace and improving the humanitarian situation.

We have noted on a number of previous occasions the need for an objective assessment of the actions of all parties to the conflict. We are pleased that a number of measures are being taken to investigate the attack on AU peacekeepers in Haskanita in September 2007. An important event in that area was the voluntary appearance of the rebel leader, Abu Garda, in The Hague and the start of the trial of his case. We call on the Prosecutor not to slacken in his attention to the work in that regard.

The Russian Federation registers its deep regret and concern regarding information on the ongoing violence in Darfur. It is clear that A comprehensive political settlement, with the active assistance of the

African Union-United Nations Hybrid Operation in Darfur, is the only way to end it. We support the efforts of the Joint African Union-United Nations Chief Mediator on the political process in Darfur, Mr. Bassolé, to bring a broad spectrum of Darfur rebel groups, as well as civil society leaders, into the negotiating process.

A critical challenge is for the parties to reach agreement on the cessation of armed hostilities. We are seriously concerned by the obstinate refusal of the leaders of such groups as the Justice and Equality Movement and the Sudan Liberation Movement to participate in the talks. We consider such conduct on the part of the rebels to be a major obstacle to a settlement.

We believe that the Darfur problem should be the subject of constructive dialogue and cooperation among the United Nations, the African Union and other mediators, on the one hand, and the Sudanese Government on the other. Russia has consistently helped to establish dialogue in such formats. We believe that progress in all areas of the settlement process will be made only on the basis of constructive and equal dialogue between the international community and the Government of the Sudan, with respect for the sovereignty of that country.

Mr. Takasu (Japan): Allow me to congratulate you, Mr. President, on your assumption of the presidency for the month of December. We are grateful to Ambassador Mayr-Harting and his team for their excellent presidency in November.

At the outset, I would like to thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his detailed report on recent activities and for his good presentation this morning. As an active member of the Court, Japan highly values the Prosecutor's efforts to implement resolution 1593 (2005), which Japan was honoured to vote in favour of at the time of its adoption.

It is a fundamental principle that impunity must not be condoned in respect of any crime, and particularly the most serious crimes of international concern, such as war crimes and crimes against humanity. That principle must be applied. The pursuit of justice is closely interlinked with durable peace, and both must be pursued in parallel.

Japan respects the independence and decisions of the ICC on the Darfur cases emanating from resolution 1593 (2005). Japan believes that the international community should be united in continuing to resolutely seek a solution that reconciles peace and justice. In that regard, we are closely following the development of the political and humanitarian situation in order to bring justice and peace to Darfur.

With regard to the three cases at the prosecutorial stage, the first set of arrest warrants, which were issued more than two years ago, and the second issue of an arrest warrant in March are still outstanding. In the third case, the voluntary appearance of Mr. Abu Garda for the confirmation of charges hearing in October is among the notable developments of the past six months. However, those developments are neither substantial nor expeditious enough. We urge the Government of the Sudan and all other parties to the conflict in Darfur to take the necessary actions expeditiously with regard to those cases and to address the issues of justice and peace in a manner consistent with resolution 1593 (2005) and the presidential statement of 16 June 2008 (S/PRST/2008/21).

Resolution 1593 (2005) emphasizes the promotion of the rule of law, the protection of human rights and the fight against impunity, as well as the need to promote healing and reconciliation. In that respect, the African Union High-Level Panel on Darfur carried out a comprehensive analysis of the issues of peace, justice, accountability, impunity and reconciliation in Darfur. We acknowledge the cooperation of the African Union and the tireless efforts of former President Mbeki as Chairman of the Panel. We hope that such efforts serve to facilitate the ongoing peace process in Doha.

With regard to the specific recommendations of the report, in-depth consideration and review will be necessary. We look forward to the constructive discussion of the report with the members of the Panel later this month. Since the issue of Darfur relates to complex historical, sociocultural, economic and political concerns, the international community should take a comprehensive approach to seeking an inclusive and multilateral solution.

The Security Council needs to address comprehensively the issue of impunity and justice, the humanitarian and security situation, the deployment of the African Union-United Nations Hybrid Operation in Darfur and the peace process, including general elections. At the same time, justice cannot be

compromised. To promote durable peace, it is essential to strengthen the justice system in the Sudan. We would like to encourage the Government of the Sudan to take steps to that end.

The Rome Statute represents a milestone in the development of international criminal justice. The ICC was established based on the strong will and firm belief of the international community that the most serious crimes of international concern should not go unpunished. The ICC functions most effectively when it is universally respected and when all States extend their full cooperation to the Court. Japan urges all States to cooperate with the ICC and to join hands in the effort to universalize the Rome Statute.

The Security Council has the responsibility to monitor the situation closely and to continue to make efforts to ensure that the Government of the Sudan and all other concerned parties fully cooperate with and provide assistance to the ICC, in accordance with resolution 1593 (2005). Japan is committed to seeking a way forward in close consultation with the concerned States and international and regional partners.

Mr. Liu Zhenmin (China) (*spoke in Chinese*): I once again welcome Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court, to the Security Council to brief us on the progress in fighting impunity in Darfur.

Over the past several years, the Security Council has considered the question of Darfur in the Sudan many times. During those considerations, the Chinese delegation has always emphasized the viewpoint that the Darfur issue involves a political process, peacekeeping deployment, economic development, humanitarian assistance and justice. It is very complex and requires tremendous political wisdom to find a comprehensive solution that ensures that peace and justice are achieved.

Fostering early and substantive progress in the political process in Darfur is a key precondition of and important guarantee for progress in all areas. Earlier this week, the Security Council heard briefings by the Department of Peacekeeping Operations and the Joint African Union-United Nations Chief Mediator for Darfur on the latest developments in Darfur (see S/PV.6227). Judging from their briefings, peacekeeping deployment continues to progress and the Mission is 75 per cent deployed.

A conference to launch the Darfur comprehensive peace talks was held in Doha, Qatar. Many representatives from all parties, including many members of the Security Council, attended the meeting. There is hope that the negotiations between the Government and the rebel movements will be relaunched within the year. Civil society representatives have also been invited to attend the Doha process, further broadening the social basis for the political process in Darfur.

Humanitarian work continues to progress steadily and there has been a marked improvement in the relations between the Sudan and Chad. Recently, there has been an active effort by all parties to create favourable conditions and an environment conducive to the smooth participation of the people of Darfur in next year's January elections.

That represents hard-won progress. One important reason is the political mutual trust and positive interaction of all parties. The tripartite mechanism of the United Nations, the African Union (AU) and the Sudanese Government is operating smoothly, and that is a key factor in ensuring progress in deployment.

The concern of the Sudanese Government and civil society over their national future and destiny is the inner drive for the political negotiations to forge momentum. The African countries' worry over peace and security in the Sudan and its subregion is the common impetus for the international community's promotion of a genuine solution to the Darfur issue. All of this points to the fact that trust is the basis for cooperation, and that cooperation is the important precondition for resolving all questions and diffusing all misunderstandings and differences. Similarly, questions of impunity cannot be addressed without the trust and cooperation of all parties concerned.

The AU is an important strategic partner for the United Nations in settling the question of the Sudan. Not long ago, the African Union high-level panel on Darfur, led by former President Mbeki, submitted an important report with recommendations on the format of cooperation to achieve peace and reconciliation and to address impunity. We note that the AU Peace and Security Council has approved the Mbeki report. An AU high-level delegation will come to New York later this month to brief the Council on that report. We look forward to the Security Council's in-depth exchange of views with the AU on certain questions. We also hope that

Prosecutor Moreno-Ocampo will continue to follow the latest developments in all areas connected with Darfur, maintain close communications with all parties, objectively review the latest developments and various challenges on the Darfur question, and contribute to the comprehensive and proper settlement of the Darfur issue.

Mr. Urbina (Costa Rica) (*spoke in Spanish*): I should like to begin by welcoming Prosecutor Moreno-Ocampo and thanking him for his work, for which Costa Rica is always grateful.

The Prosecutor's presentation of the tenth report of the International Criminal Court to the Security Council is an opportunity to advocate respect for the United Nations Charter. This basic obligation cannot be flouted by States without their suffering the consequences of their anti-juridical conduct. It is well known that any State that has joined this Organization is committed to accepting its obligations under the Charter. Therefore, when, on 12 November 1956, the Republic of the Sudan became a Member of the United Nations, it solemnly committed to respect the obligations imposed by the Charter, including its obligation under Article 25 to accept and comply with Security Council decisions.

Five years ago, this Council decided that the Government of the Sudan should cooperate fully with the International Criminal Court regarding crimes committed in Darfur. To date, the cooperation of the Government of the Sudan has been non-existent. In June 2008, in a presidential statement initiated by Costa Rica(S/PRST/2008/21), the Council once again reiterated its demand for cooperation. That has been the only action taken by the Council in this matter since the adoption of resolution 1593 (2005). However, the Government of Sudan has ignored the decisions of this Council and fails to honour its obligations under the Charter, without any consequence whatever.

It is not true that the Government of the Sudan is not required to cooperate with the International Criminal Court because it is not party to the Rome Statute. What obliges the Government of the Sudan to cooperate with the International Criminal Court is not the Statute of Rome but its membership in the United Nations and its obligation to comply with the decisions of this Council, including resolution 1593 (2005). Non-compliance with obligations under the Charter should have consequences for any Member State, and the Sudan should be no exception.

This Council should not fool itself. The damage caused by the anti-juridical conduct of the Government of the Sudan is neither negligible nor limited to merely legal technicalities. This Council, by its tolerant attitude towards that Government, has contributed to eroding trust in international justice and has defended impunity. Meanwhile in Darfur, indiscriminate attacks against the civilian population continue, sexual violence continues to be used as a weapon of war and a means of intimidation, and the recruitment and non-demobilization of child soldiers persist. All of those crimes have their roots in impunity.

Referring the situation in Darfur to the International Criminal Court does not in itself exonerate the international community from its obligation to demand accountability for the genocide in Darfur, nor has it been an effective instrument in countering impunity for the crimes that have been and continue to be committed in that region of the Sudan. The intervention of the International Criminal Court is only a sign of the need for greater commitment, as the Prosecutor pointed out. The intervention of the Court is must be a catalyst for decisive national and international action in response to challenges to justice in situations of conflict.

Instead of taking such decisive action, some time ago the Government of the Sudan set up tribunals, prosecutors, committees and administrative units in an effort to show some will to carry out justice and combat impunity. To date, the result is that the Sudanese indicted by the Court have not been brought to justice and continue to occupy important positions in the apparatus of the Sudanese State. The exception is a Sudanese opponent to the Government who has appeared voluntarily before the Court.

The international community has been much more consistent in promoting justice, combating impunity and working towards sustainable peace. The League of Arab States has made steps towards accountability, and in mid-2008 the African Union set up a high-level panel on Darfur, presided over by former President Thabo Mbeki, to consider the interlinked matters of combating impunity and promoting peace and reconciliation. The panel's report, which will be discussed by this Council in the near future, was unanimously adopted in October. Its recommendations mark the way forward.

Costa Rica welcomes the decisive stance of the African States that have implemented the commitment to comply with their obligations under the Rome Statute, and regrets the inaction of this Council, which for 18 months has failed to achieve the necessary consensus to secure the implementation of its own decisions.

An analysis of the information provided by the Prosecutor raises other concerns that should not be ignored. The international community should take an interest in the protection of witnesses. It should also carefully consider the repercussions of the expulsion of the humanitarian organizations that worked in Darfur and the so-called Sudanization of assistance. Taken together, those situations have had an enormous impact on the lives of displaced persons living in camps, including on their most basic rights. They have also resulted in forced returns to unsafe areas, engendered intimidation, provided cover for new crimes and fostered impunity.

Concerns about the harassment of, and attacks on, humanitarian personnel, and the deaths of many of them, cannot just mean figures on a page. They should lead to a more decisive stance on the part of the international community, in particular the Security Council.

Mr. Mayr-Harting (Austria): At the outset, I would like to thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for the presentation of his tenth report pursuant to resolution 1593 (2005), by which the Security Council referred the situation in Darfur to the ICC. Austria is a long-standing advocate of the rule of law and the fight against impunity and is a strong supporter of the ICC.

In its resolution 1894 (2009), on the protection of civilians in situations of armed conflict, which was adopted last month, the Security Council once again affirmed its strong opposition to impunity for serious violations of international humanitarian law and human rights and drew attention to the full range of justice and reconciliation mechanisms, including international and mixed criminal courts and tribunals. The Council also recalled the inclusion of war crimes, crimes against humanity and genocide in the statutes of ad hoc tribunals and the Rome Statute of the ICC, and emphasized in that regard the principle of complementarity.

Since the last report of the Prosecutor, in June, the Court has continued to work on the Darfur situation. In a positive development, to which other delegations have already referred, rebel leader Abu Garda, who is suspected of responsibility for the Haskanita attacks against African Union forces, once again voluntarily appeared before the Court for a confirmation-of-charges hearing, in October.

More than four years have passed since the adoption of resolution 1593 (2005). We recall the presidential statement of 16 June 2008 (S/PRST/2008/21), which urged the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005). The European Union has also issued a number of clear statements in that regard. On 15 September, the Council of the European Union underlined that impunity for international crimes can never be accepted, reiterated its support for the ICC and called upon the Government of the Sudan to cooperate fully with the Court, in accordance with its obligations under international law.

We remain deeply concerned about the dire humanitarian situation and the violence in the region. Notwithstanding the efforts by the United Nations Office for the Coordination of Humanitarian Affairs and others, we have still not been able to overcome the negative consequences of the expulsion of non-governmental organizations in March 2009. The United Nations and other international actors, including the European Union, have repeated their calls on the Sudanese Government and all other parties to the conflict to ensure, in accordance with their international obligation, that humanitarian assistance reaches the most vulnerable people in the Sudan.

In October, the High-Level Panel on Darfur, led by former President Thabo Mbeki, first presented its report on Darfur, entitled "The quest for peace, justice and reconciliation" (S/2009/599, annex I), which was endorsed by the Peace and Security Council of the African Union. We commend the efforts of the High-Level Panel. We welcome the wide consultations undertaken by the Panel in the preparation of the report. We also welcome its interaction with the Prosecutor of the ICC.

The High-Level Panel's report sets out a number of recommendations to promote justice and reconciliation in Darfur, including proposals to expand and strengthen the system of the Sudan's special courts to deal with crimes committed in the conflict in Darfur,

to establish a hybrid court for the most serious crimes and to establish a truth, justice and reconciliation commission. Austria looks forward to the presentation of the report by President Mbeki in the Security Council later this month. That will give us a chance to learn more about envisaged steps and measures to implement the Panel's recommendations and their practical implications. We believe that measures to ensure accountability will be fundamental to achieving lasting peace and reconciliation in Darfur and in the Sudan as a whole. We welcome and support all efforts that contribute to that end.

Austria encourages continued dialogue and diplomatic efforts among the Court, the African Union and the League of Arab States in order to ensure broad support for the Court in its aim to promote the rule of law, protect human rights and combat impunity within the framework provided by the Rome Statute. Austria is convinced that peace and justice are in no way contradictory goals, but rather mutually reinforcing imperatives. It is our joint responsibility to address both.

Mr. Apakan (Turkey): Let me first thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing. While not a State party to the Rome Statute, Turkey fully shares the ideals and principles that gave rise to the International Criminal Court. The need to fight impunity and promote justice, especially in countries emerging from conflict, is as evident today as it ever was.

Turkey believes that in the years to come the ICC will have an important and complementary role to play in efforts to fight impunity with regard to the most serious of crimes. On the other hand, it is a relatively new feature of international law. In the light of recent experiences, it is also clear that the Court will continue to face some serious challenges.

Over the course of the past 12 months, the process initiated by resolution 1593 (2005) reached critical mass. Starting in January, we witnessed a series of negative events based on causes that inadvertently had an impact on the lives of countless innocent people and further complicated an already difficult situation. As we approach 2010, we are glad to see that the turbulence of 2009 is behind us.

As we have stated before, Turkey continues to believe that the implementation of resolution 1593 (2005) cannot, and must not, be decoupled or pursued in isolation from the wider framework of the search for lasting peace and stability in Darfur. The implementation of that resolution is not an end in itself. In order to have meaning, it must be part of a broader framework that combines all the necessary elements for peace to take root. In that context, finding a sustainable political settlement that takes into account the root causes of the conflict, addressing the humanitarian situation in a forward-looking and results-oriented manner and promoting broad-based reconciliation and meaningful justice for Darfuris are all vital and mutually reinforcing goals that need to be pursued together in Darfur.

Turkey believes that progress in all those areas is possible, given time and provided that the right framework is in place. On the other hand, placing undue emphasis on just one of those goals risks undermining progress in others. As experiences elsewhere in Africa have clearly shown, there can be no real justice or reconciliation without peace and an enabling political framework.

With regard to Darfur, Turkey also places importance on building and maintaining a regional approach that considers the many sensitive dynamics at play. The African Union, the Arab League and the Organization of the Islamic Conference, as well as neighbouring countries, all have different yet crucial roles to play, as does the Doha process, where tangible progress in the near term is going to be absolutely vital.

Turkey welcomes the report of the African Union High-level Panel on Darfur (S/2009/599, annex I), led by His Excellency Mr. Thabo Mbeki. The report contains some important insights on and critical analyses of the challenges not only in Darfur but in the Sudan in general. It also has some stern warnings that must be taken very seriously. Turkey also welcomes the report's concrete recommendations, which we believe are well thought out and specifically tailored to the problems at hand.

In moving forward, we call on all parties involved to take those recommendations as a point of reference and to make best use of this report. Turkey continues to believe that a peaceful settlement in Darfur through political dialogue is possible. The alternative and its potential fallout carry enormous risks, not only for the region but also for international peace and security.

While there can be no quick fixes, a just and viable political settlement that addresses all of the rational grievances and expectations of the legitimate parties involved can also open a path to meaningful reconciliation and justice for all Sudanese people, including the people of Darfur. In working towards that goal, it will be crucial to keep the bigger picture in focus and refrain from steps that could further aggravate the already complex situation.

Mr. Vilović (Croatia): Allow me to join others in welcoming Prosecutor Moreno-Ocampo to the Chamber again. I also thank him for presenting his tenth report submitted pursuant to resolution 1593 (2005), updating the Council on the judicial and investigative activities of the International Criminal Court (ICC) relating to the Darfur situation. It is a situation of continuing instability, criminal activity and lawlessness, where civilians and displaced persons continue to suffer and where stress on humanitarian operations has been compounded by the erosion of humanitarian principles.

My delegation reiterates its serious concern about the ongoing lack of cooperation by the Government of the Sudan with the ICC Prosecutor. The arrest warrants issued by the Court remain unfulfilled. The Sudanese Government, led by President Al-Bashir, continues with its policy of contempt towards the victims of the conflict in Darfur and has invested no credible efforts to end impunity for crimes committed.

The messages contained in resolution 1593 (2005) and the presidential statement of 16 June 2008 (S/PRST/2008/21) remain clear and relevant. The Government of the Sudan and all other parties to the conflict should fully cooperate with the Court and provide any necessary assistance to the ICC and the Prosecutor.

In that context, we welcome the voluntary appearance before the ICC of the indictee in the Haskanita trial. We take note of the Juba declaration of September and hope it will mobilize other parties to cooperate with the Court.

My delegation welcomes the focus of regional organizations, notably the Arab League and the African Union, on efforts to close the impunity gap in Darfur while addressing peace and justice, promoting accountability and strengthening national capacities for combating impunity. We especially welcome the report of the African Union High-Level Panel on Darfur (S/2009/599, annex I) and its recommendations. We hope that the measures it proposes will be met by meaningful response from the Sudanese side in order to put an end to impunity and enable healing and reconciliation. We look forward to hearing more from the Panel in the Council soon.

The principle of complementarity is of paramount importance for the international criminal justice system. Regrettably, the Sudan has yet to offer a credible domestic alternative to the jurisdiction of the ICC. As the Prosecutor's report notes, there have been no developments in that regard during the reporting period.

My delegation welcomes the increasing international and regional efforts to promote dialogue and to reactivate the political process, focusing on both peace in Darfur and implementation of the Comprehensive Peace Agreement in order to achieve the overall objective of sustainable peace and stability in the Sudan. Having said that, my delegation also believes that it is vital to preserve respect for the independent judicial mandate of the ICC and its Prosecutor.

Last month, the Security Council reaffirmed its resolve to strengthen the protection of civilians in armed conflict and reaffirmed its strong opposition to impunity for serious violations of international humanitarian law and human rights law, emphasizing the responsibility of States to comply with their relevant obligations and end impunity. It would be misleading to see those goals as incompatible with the wider objective of maintaining international peace and security. The ICC has a clear complementary role in that regard. Croatia will continue to fully and unequivocally support the activities of the Prosecutor in carrying out the mandate under resolution 1593 (2005), as well as the role of the ICC in general.

Mr. Rugunda (Uganda): We thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his report and for his comprehensive briefing.

The establishment of the African Union Panel of eminent persons, headed by President Mbeki, and the submission of their report of findings and recommendations on 8 October in Abuja are major developments since the Prosecutor gave his report and briefing in June (see S/PV.6135). We commend the cooperation of the Panel and the ICC while carrying out their mandate.

President Mbeki's panel submitted recommendations on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could effectively and comprehensively be achieved, thus upholding justice by combating impunity while contributing to ensuring peace, stability and security in the Sudan.

Uganda warmly welcomes and supports the recommendations in the Mbeki report calling for the establishment of a hybrid court that should exercise original and appellate jurisdiction over individuals who bear responsibility for the gravest crimes committed during the conflict in Darfur. We urge the Government of the Sudan to establish the hybrid court.

The Panel further recommends that such courts be constituted by Sudanese judges and those of other nationalities. Such measures would respect the independent judicial mandate of the ICC and would allow independent domestic jurisdiction in the Sudan. That would strengthen judicial institutions in the Sudan to handle past, present and future violations that constitute the most serious crimes of concern to the international community. We believe that the Mbeki report presents us with a good basis on which to resolve the outstanding impasse between the Sudan and the ICC.

Uganda believes that ending impunity is the only credible deterrent against crimes of the most serious concern to the international community. We attach great important to the delivery of justice and the fight against impunity. Nonetheless, it is important to take into account the need to resolve conflicts in a manner that would not drive us back to anarchy. It is therefore important to take into account that the particular circumstances of each individual situation. We are convinced that the Mbeki findings and recommendations have taken into account the concrete situation on the ground in Darfur, in the Sudan and in Africa.

Uganda remains concerned about the humanitarian situation in Darfur. There is not enough food assistance. Health services and facilities remain inadequate. Water supply and sanitation support remain insufficient. We commend all the United Nations agencies and other donors that have scaled up their activities to alleviate the suffering of the people of Darfur. We are also concerned about reports of sexual violence, which continues in and around the camps in Darfur, and about reports of continued recruitment of child soldiers. We call on the Government of the Sudan to take appropriate measures to ensure that those incidents are stopped and that the perpetrators of those crimes are brought to justice.

Finally, we call on the Security Council to support the recommendations of the Mbeki report. The Mbeki report and its recommendations provide a practical and realistic way forward for accountability, reconciliation and lasting peace in Darfur.

Mr. Le Luong Minh (Viet Nam): My delegation takes note of the tenth report of the Prosecutor of the International Criminal Court (ICC) to the Security Council pursuant to resolution 1593 (2005). And I thank Mr. Luis Moreno-Ocampo for his briefing to the Council.

Viet Nam has always maintained that the perpetrators of the most serious crimes — such as genocide, war crimes, crimes of aggression and crimes against humanity — must be brought to justice. In the fight against such heinous crimes, we recognize and support the role and contributions of the international criminal tribunals. At the same time, we consider that, as those tribunals are courts of last resort, it is essential to respect the primary role of national jurisdictions and to render capacity-building assistance to national judiciaries, as necessary, in order to enable them to take up their judicial responsibilities.

Viet Nam is concerned about the deteriorating humanitarian conditions in Darfur and the alleged commission of serious crimes against civilians. We support the efforts of the African Union (AU) to engage with the Sudanese Government in deploying the seven-track solution package to achieve peace, security and reconciliation in Darfur. We welcome the creation of the African Union High-Level Panel on Darfur, composed of independent African individuals, whose mandate is to address the interlinked issues of combating impunity and promoting peace and reconciliation. The High-Level Panel's report (S/2009/599, annex I), adopted by the AU Peace and Security Council, stresses the need to strengthen the Sudan's national legal system, to deal appropriately with the perpetrators of crimes, and to make reparations to the victims inside the Sudan. We note the ICC Prosecutor's efforts to cooperate with the AU High-Level Panel, and we encourage his further

cooperation with the AU high-level implementation panel aimed at achieving the above-mentioned objective.

While we reaffirm the need for all parties to the armed conflict in Darfur to implement Security Council resolution 1593 (2005), Viet Nam supports responsible actions by the Council that take into account the concern and positions of its very important regional peace and security partners.

Mr. Dabbashi (Libyan Arab Jamahiriya) (*spoke in Arabic*): We listened attentively to the briefing by Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC). Libya follows with great attention the situation in Darfur, based on its eagerness to achieve peace and justice, and has participated actively in efforts aimed at the achievement of peace, stability and justice in Darfur. Libya coordinates its efforts with the African Union-United Nations Chief Mediator for Darfur, Mr. Djibril Bassolé, and with the Government of Qatar, as well as with other regional Arab and African efforts. We do this with a view to bringing all parties together at the negotiating table in order to achieve a permanent settlement of the conflict and to put an end to the human suffering in Darfur.

Libya hopes that the members of this Council will realize that there is no alternative to an active political process that must take highest priority in order to foster circumstances conducive to stability and security, and to establish justice and national reconciliation in Darfur.

The measures adopted by the Prosecutor come under the framework of Security Council resolution 1593 (2005), which referred the situation in Darfur to the Prosecutor of the International Criminal Court. The resolution raised a great number of objections both within and outside the Council. A significant number of Council members abstained from voting on that resolution, and there are still questions circulating around the purpose of issuing a resolution on Darfur while the Council remains silent on other areas where civilians are being killed by the most ferocious weapons and where, up to this very moment, systemic impunity is condoned before the eyes of the world.

The Gaza Strip and Afghanistan are testament to that. Those who today speak about the realization of justice and ending impunity in the Sudan are the very same who opposed even discussion in the Security Council of the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), known as the Goldstone report, concerning the war crimes and crimes against humanity committed against Palestinian civilians by the occupying Israeli forces. That makes the International Criminal Court nothing more than a tool manipulated by certain countries to further their policies. Regrettably, the Prosecutor appears to be the executor of the policies of those countries.

As we all know, the Sudan is not party to the Rome Statute and is therefore not bound by the resolutions of the International Criminal Court. Even resolution 1593 (2005), which Mr. Moreno-Ocampo and others use as a fall-back, is not binding on the Government of the Sudan because it clearly affirms in paragraph 2 that "that States not party to the Rome Statute have no obligation under the Statute", although it also "urges all States and concerned regional and other international organizations to cooperate fully". As indicated in the advisory opinion that the Secretariat's Office of Legal Affairs circulated to the press a few months ago, from a legal perspective the term "urges" is not binding. I do not believe that Mr. Moreno-Ocampo and certain delegations present are better equipped to interpret United Nations resolutions than the Office of Legal Affairs.

Paragraphs 62 and 63 of Mr. Moreno-Ocampo's report contain clear falsifications of the Security Council's pronouncements in a resolution and a presidential statement. The Prosecutor is mandated to work within the framework of a jurisdiction established under professional principles and free of selectivity, incitement and threats. He is expected to refrain from making and repeating accusations and allegations through press campaigns that go so far as to describe a head of State as a fugitive from justice when that individual is participating in summit meetings seeking to resolve the conflict and to establish peace in his country.

In that respect, the report before us, especially in paragraph 66 — which is intended to indicate the support enjoyed by the International Criminal Court — clearly reveals how limited that support is. That paragraph notes that "[d]uring the general debate in the General Assembly in October, 56 States emphasized the importance of cooperation with the Court including in relation to arrests". This statement plainly shows that more than two thirds of Member States do not in

fact support the steps and measures taken by the Prosecutor in his dealings with the Sudan.

Although the report of the Prosecutor clearly indicates in paragraph 67 that "African States parties to the Rome Statute" — totalling 37 States — "have affirmed ... their position as African Union members that the Security Council should consider a deferral of the Darfur investigation", the Prosecutor has ignored that request, as the report reveals in subsequent paragraphs, particularly paragraph 69, which focuses on the Prosecutor's contacts with African States but does not detail the outcomes of those contacts. That is obviously because the States in question have rejected his measures.

Also surprising is the absence of any objective and practical vision behind the Prosecutor's measures and positions. He requested that an arrest warrant be issued against President Omar Al-Bashir at a time when efforts were being made to deploy the African Union-United Nations Hybrid Operation in Darfur and to advance the peace process. On 4 March, he urged the issuance of arrest warrants against State officials, provoking popular outrage and undermining hopes for peace and stability.

Regrettably, he did so in utter disregard for the realities of the Sudan and its current sensitive and complex circumstances. For instance, the implementation of the Comprehensive Peace Agreement between the North and South is now at a critical phase as elections, an important referendum and deadlines for resolving other outstanding issues are looming. At the same time, we hear reports of violent tribal conflicts over sources of livelihood in the South. In Darfur itself, the humanitarian and security situation has been affected by the Prosecutor's actions, and incidents against humanitarian assistance and peacekeeping operations are on the increase.

The Prosecutor has actively escalated his accusations and marginalized the constructive efforts and positions of the forces, parties and organizations that have direct knowledge of the situation on the ground and its repercussions in Darfur. He has ignored several resolutions and statements that have been reissued as official documents of the Security Council after having been issued by important regional organizations representing more than two thirds of the States Members of the United Nations, including the African Union — the Organization's principal partner in Darfur — the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement. The Security Council operates on behalf of those States, while the United Nations Charter recognizes the importance of regional arrangements in achieving the pacific settlement of disputes and specifically mandates the Council to encourage their role in that respect.

In this regard, I recall the following African Union resolution, in which the Peace and Security Council expressed its conviction that,

> "in view of the delicate nature of the processes underway in the Sudan, approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan" (*S/2008/481, annex, para. 9*).

The Peace and Security Council reiterated its call on the Security Council, "in accordance with the provisions of Article 16 of the Rome Statute of the International Criminal Court, to defer the process initiated by the Court" (*ibid., para. 11*).

In addition to the statements issued by the African Union, the United Nations principal partner in the hybrid operation in Darfur, other regional organizations — including the Organization of the Islamic Conference, the League of Arab States and the Non-Aligned Movement — have outlined similar positions in a series of statements and resolutions on this matter. In his briefing on 27 April, Mr. Rodolphe Adada, Joint African Union-United Nations Special Representative for Darfur and head of the African Union-United Nations Hybrid Operation in Darfur, told the Council:

> "The ICC issue has dominated and polarized Sudanese political life. It has weakened the position of those in the Sudan who have been working for compromise and consensus and has encouraged militant sentiment ..." (*S/PV.6112, p. 2*).

As members know, Mr. Adada's views about the improved situation in Darfur did not please certain members of the Council and he was forced under pressure to leave his post.

It is unquestionable that peace and justice are indivisible. But how can we achieve justice, especially in a society exhausted by conflict and numerous humanitarian tragedies? It can be done only through a political process and by seriously and comprehensively addressing both the conflict's underlying causes and its effects. That is the lesson we learn from history, and it is the only way to achieve national reconciliation, security and stability, and to ensure respect for the sovereignty of a State Member of the United Nations. These are the objective conditions for establishing justice and reconciliation.

That has been the basis of the positions and resolutions of the African Union on this matter, which were not motivated by any desire to overlook or ignore the conditions needed for establishing justice in Darfur, but rather by the determination to create those conditions by bringing about security and political stability. In that regard, we recall the report of the African Union High-level Panel on Darfur (S/2009/599, annex I) chaired by former President Thabo Mbeki of South Africa, which was adopted by the Peace and Security Council of the African Union on 29 October. Libya highly appreciates the Panel's efforts, and we hope that the Council will discuss its recommendations objectively and positively, bearing in mind the requirements of simultaneously ensuring peace, justice and reconciliation, including by providing redress for the victims of the Darfur conflict and helping meet the desire of the people of the Sudan to live in lasting peace and stability so that they can dedicate themselves to development, progress and prosperity.

It is time to undo the negative effects of the ICC's measures and return to the spirit of the Rome Statute by activating its article 16, which gives us the authority to defer investigations or prosecutions. That is what is required to maintain peace and security, especially in the light of the African Union High-level Panel's recommendations. The Security Council's failure to apply article 16 of the Rome Statute, despite a number of requests that this be done, affects its credibility. The negative ramifications of implementing article 13 (b) require that we activate the other provisions and defer pending legal steps.

That is necessary in order to create a climate conducive to comprehensive solutions ensuring stability and justice in the Sudan. That is the hope of my country, whose Leader has the honour of Chairing the African Union. It is also the hope of more than two thirds of the Members of the United Nations, which are represented in the relevant international and regional organizations. All of them are continuing their noble efforts on all tracks; we have no doubt that those efforts will be effective in achieving peace, stability and justice in the Sudan.

The President (*spoke in French*): I shall now make a statement in my capacity as the representative of Burkina Faso.

I thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing.

My delegation regrets that, in spite of the significant efforts of the entire international community, peace has not yet returned to Darfur. Civilians, humanitarian and peacekeeping personnel, refugees and displaced persons continue to face daily violence. Since 1 June 2005, the Office of the Prosecutor of the ICC has initiated three major cases related to the conflict in Darfur. Burkina Faso reaffirms its confidence in an independent international system of criminal justice and acknowledges that the ICC prosecutions were initiated pursuant to Council resolution 1593 (2005).

Yet, like many other members of the international community which belong to the African Union, the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement, my country is concerned by the impact of the arrest warrant issued against President Al-Bashir. Indeed, although it is true that combating impunity is a vital element in the restoration of lasting peace to Darfur and to the Sudan in general, it is also true that, in the absence of a consensus political solution, attaining the objective of justice cannot alone bring peace in such a complex conflict. Hence, it is crucial to take advantage of opportunities to bring about political normalization and thus to make decisive strides towards peace, which is a common objective of Security Council resolutions and the relevant decisions of African Union bodies.

We therefore continue to believe that the issuance of that arrest warrant can only further complicate the peace process and the efforts of the Security Council and the African Union. As we have always stressed, that position implies no value judgement on the substance of the issue; it is an firm invitation to give both justice and the political process a chance. We continue to believe that peace can return to Darfur, especially in the light of the 30 November briefing by the Joint African Union-United Nations Chief Mediator

for Darfur (see S/PV.6227), whom we fully support, on the next stages of the political negotiations, and in the light of the important report of the African Union High-Level Panel on Darfur, chaired by President Thabo Mbeki (S/2009/599, annex I). We shall have an opportunity to consider that report later this month. We also welcome the positive cooperation between those two entities and between them and the ICC Prosecutor.

Finally, we appeal once again to the parties to strictly respect the lives of civilians and humanitarian and peacekeeping personnel and to provide unimpeded humanitarian access to all populations.

I now resume my functions as President of the Security Council.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 12.20 p.m.